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8 Attorneys for Plaintiff,
9 BISCOTTI, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 BISCOTTI, INC.,

13 Plaintiff,

14 v.

15 KANDY KISS OF CALIFORNIA, INC.
16 d/b/a Zoey, and DOES 1-10, inclusive,

17 Defendants.

Case No. 3:07-cv-3681 BZ

**STIPULATION AND PROPOSED ORDER RE
PRIVATE MEDIATION IN LIEU OF COURT-
CONNECTED MEDIATION**

Complaint Filed: July 17, 2007

18 IT IS HEREBY STIPULATED, between plaintiff, BISCOTTI, INC., ("Plaintiff") and
19 defendant KANDY KISS OF CALIFORNIA, INC. d/b/a Zoey ("Defendant") by and through their
20 respective attorneys of record herein, that:

- 21 1. WHEREAS, on July 17, 2007, Plaintiff filed this civil action for copyright
22 infringement and related claims, and
23 2. WHEREAS on September 24, 2007, Defendant filed its Answer to Complaint.
24 3. WHEREAS on July 17, 2007, the Court referred this matter to the court-connected
25 mediation program pursuant to (ADR L.R. 6), and
26 4. WHEREAS the parties have agreed to attend private mediation in lieu of court-
27 connected mediation. The parties are in the process of coordinating a date with a private mediator.

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1 Both parties believe private mediation will be more conducive to resolution of the case.

2 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE, as follows:

3 1. The parties agree to attend private mediation in lieu of court-ordered arbitration as
4 regards this matter, and

5 2. The parties will confer and endeavor to agree upon a mutually acceptable mediator
6 and will promptly notify the court of their selection once a date has been confirmed.

7
8
9 Dated: November 27, 2007

NIXON PEABODY LLP

10
11 By: 

12 GLENN E. WESTREICH
13 ROSALYN P. MITCHELL
14 Attorneys for Plaintiff
15 BISCOTTI, INC.

16 Dated: November 16, 2007

17 EZRA, BRUTZKUS, GUBNER LLP

18 By: 

19 MARK D. BRUTZKUS
20 LUIS A. GARCIA
21 Attorneys for Defendant
22 KANDY KISS OF CALIFORNIA, INC. d/b/a
23 Zoey

24 It is so ordered.

25 Dated: _____

26
27 By: _____

28 The Honorable Bernard Zimmerman
Magistrate Judge

PROOF OF SERVICE

Biscotti, Inc. v. Kandy Kiss of California, Inc., et al.
United States District Court, Northern District
Case No. 3:07-cv-3681 BZ

I, the undersigned, certify that I am employed in the City and County of San Francisco, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is Nixon Peabody LLP, One Embarcadero Center, 18th Floor, San Francisco, CA 94111-3600.

On November 27, 2007, I served the following document(s):

**STIPULATION AND PROPOSED ORDER RE PRIVATE MEDIATION IN
 LIEU OF COURT-CONNECTED MEDIATION**


on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

- X: By First-Class Mail — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in San Francisco, CA, for mailing to the office of the addressee following ordinary business practices.
- ___: By Personal Service — I caused each such envelope to be given to a courier messenger to personally deliver to the office of the addressee.
- ___: By Overnight Courier — I caused each such envelope to be given to an overnight mail service at San Francisco, CA, to be hand delivered to the office of the addressee on the next business day.
- ___: By Facsimile — From facsimile number 415-984-8300, I caused each such document to be transmitted by facsimile machine, to the parties and numbers listed below, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration.

Addressee(s)

Mark D. Brutzkus, Esq. Luis A. Garcia, Esq. EZRA, BRUTZKUS, GUBNER LLP 21650 Oxnard Street, Suite 500 Woodland Hills, CA 91367	Attorneys for Defendant Kandy Kiss of California, dba Zoey Telephone: (818) 827-9000 Facsimile: (818) 827-9099 mbrutzkus@egb-law.com lgarcia@ebg-law.com
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I declare under penalty of perjury that the foregoing is true and correct. Executed on November 27, 2007, at San Francisco, California.



Cara M. Kim